

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: EXCHANGE OF TRANSIT TRAFFIC	DOCKET NO. SPU-00-7 TF-00-275 (DRU-00-2)
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ORDER AFFIRMING PROPOSED DECISION AND ORDER

(Issued March 18, 2002)

PROCEDURAL HISTORY

On May 19, 2000, Qwest Corporation (Qwest) filed a petition with the Utilities Board (Board) for a declaratory order regarding the exchange of local traffic by wireless and other local calling entities using Qwest's facilities. Qwest's petition was identified as Docket No. DRU-00-2. However, due to the complexity and number of issues presented by the petition, the Board subsequently docketed the petition as a contested case proceeding, identified as Docket No. SPU-00-7.

On November 26, 2001, Board Chairman Munns, sitting as a Presiding Officer pursuant to earlier order of the Board, issued a "Proposed Decision and Order" in this docket. As summarized in the proposed decision, this case concerns telephone traffic between a wireless customer and a wireline customer served by an independent telephone company. Currently, if the wireless customer places such a call, the wireless companies deliver the call to Qwest, which transports the traffic to Iowa Network Systems, Inc. (INS), a centralized equal access service provider. INS

then carries the call to the independent local exchange carriers (LECs) for connection to the called customer. Qwest charges the wireless companies a transit fee for carrying the traffic. INS charges a "centralized equal access" (CEA) fee to Qwest for carrying the traffic. The independent LECs assess access charges to Qwest for terminating the wireless traffic to their customers.

In the proposed decision and order, the Presiding Officer concluded that federal law defines the wireless traffic at issue as "local," so access charges do not apply. The wireless carriers are entitled to interconnect directly with the independent LECs on a bill-and-keep basis, pursuant to Board and Federal Communications Commission (FCC) rules. Qwest is entitled to compensation for carrying this traffic but has no obligation to pay access or other terminating fees because this is local traffic. If the wireless carriers want to use INS facilities for an indirect connection, they may do so, but INS is entitled to compensation for providing those services. The appropriate rate for INS's services cannot be determined on this record. The parties were encouraged to negotiate an agreement regarding these matters under the federal Act, with Board arbitration available for any issues the parties are unable to resolve by negotiation.

On December 11, 2001, notices of appeal were filed by INS, the Rural Iowa Independent Telephone Association (RIITA), Qwest, Iowa Telecommunications Association (ITA), and Central Scott Telephone Company (Central Scott). On December 21, 2001, the Board issued an order waiving rules 7.8(2)"c" and "d" and establishing a procedural schedule for this appeal.

Pursuant to that schedule, on January 11, 2002, responses to the notices of appeal were filed by INS, Qwest, RIITA, ITA, Central Scott, U.S. Cellular, and Verizon Wireless (collectively referred to hereinafter as Verizon), Sprint Spectrum L.P. d/b/a Sprint PCS and Sprint Communications Company L.P. (Sprint), South Slope Cooperative Telephone Company, Inc. (South Slope), and AT&T Wireless Services, Inc. (AT&T Wireless).

The parties raise numerous alleged issues regarding the Proposed Decision, but almost all of them fall within the four major issues identified and decided by the Presiding Officer. Accordingly, this order will be organized along the lines of the Proposed Decision, with a concluding section for issues not decided in the Proposed Decision.

Some of the parties requested that the Board establish a schedule for further briefing and, in some cases, oral argument. The Board will deny those requests. The parties fully briefed each of these issues after the hearing and the notices of appeal and responsive filings are substantial and appear to contain all arguments the parties would present to the Board if additional briefing were permitted. No purpose would be served by burdening the record with repetitive argument.

ANALYSIS

Issue 1. Do access charges apply to intraMTA CMRS traffic?

A. Summary of arguments

ITA and INS argue the Proposed Decision is in error when it concludes that the FCC has ruled that intraMTA¹ CMRS² traffic is "local" and that access charges therefore do not apply. (See, e.g., INS Notice of Appeal at pages 8-9.) The ITA and INS rely upon paragraphs 45 and 46 of the FCC Remand Order,³ in which the FCC finds that 47 U.S.C. § 251(g) excludes certain types of telecommunications traffic (specifically, data traffic bound for an internet service provider, or ISP) from the other provisions of § 251. INS and ITA argue that this reasoning also excludes intraMTA CMRS traffic that was being treated as access traffic prior to the passage of the Telecommunications Act of 1996⁴.

Qwest, Verizon, and Sprint respond that the Proposed Decision correctly concludes that access charges do not apply to intraMTA CMRS traffic because it is local traffic. They argue that in paragraph 47 of the ISP Remand Order, the FCC

¹ "IntraMTA traffic" is wireless originated or terminated traffic within a federally-defined Major Trading Area (MTA). The majority of Iowa is in the Des Moines MTA.

² "CMRS" is Commercial Mobile Radio Service, the federal term for cellular, PCS, and other wireless communications systems where at least one end of the call uses technology that can be, and ordinarily is, used while mobile.

³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, "Order On Remand And Report And Order," 16 FCC Rcd 9151 (2001) (hereinafter the ISP Remand Order).

⁴ INS also argues that in November of 2001 it filed revisions to its FCC tariff that make it the governing tariff for all delivery of CMRS traffic in Iowa, see INS Notice of Appeal at pages 4-5. INS offers no explanation as to how a federally-filed tariff can govern intrastate traffic and still comply with 47 U.S.C. § 152(b), which prohibits the FCC from exercising jurisdiction over intrastate communications services. The Board finds this argument without merit and will not further address it.

specifically stated that its § 251(g) analysis does not apply to CMRS traffic. Thus, the ITA and INS argument is in error and should be rejected.

B. Analysis

The argument advanced by INS and ITA relies upon selected quotes from the FCC's ISP Remand Order, but ignores other language in the order that is more directly applicable to this case. INS, for example, argues that paragraph 30 of the ISP Remand Order substituted a new analysis under 47 U.S.C. § 251(g) for the § 251(b) analysis in the earlier Local Competition Order (cited in the Proposed Decision in this docket). However, paragraph 30 of the ISP Remand Order is directed to ISP-bound data traffic on the wireline network and does not apply to wireless traffic. In paragraph 47 of the same ISP Remand Order, the FCC clearly states that the ISP data traffic analysis does not apply to CMRS traffic and that the analysis of the Local Competition Order continues to hold true:

47. We note that the exchange of traffic between LECs and commercial mobile radio service (CMRS) providers is subject to a slightly different analysis. In the Local Competition Order, the Commission noted its jurisdiction to regulate LEC-CMRS interconnection under section 332 of the Act but decided, at its option, to apply sections 251 and 252 to LEC-CMRS interconnection. At that time, the Commission declined to delineate the precise contours of or the relationship between its jurisdiction over LEC-CMRS interconnection under sections 251 and 332, but it made clear that it was not rejecting section 332 as an independent basis for jurisdiction. **The Commission went on to conclude that section 251(b)(5) obligations extend to traffic transmitted between LECs and CMRS providers, because the latter are telecommunications carriers.** The Commission also held that reciprocal compensation, rather than interstate or intrastate access

charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA). In so holding, the Commission expressly relied on its “authority under section 251(g) to preserve the current interstate access charge regime” to ensure that interstate access charges would be assessed only for traffic “currently subject to interstate access charges,” although the Commission’s section 332 jurisdiction could serve as an alternative basis to reach this result. **Thus the analysis we adopt in this Order, that section 251(g) limits the scope of section 251(b)(5), does not affect either the application of the latter section to LEC-CMRS interconnection or our jurisdiction over LEC-CMRS interconnection under section 332.**

ISP Remand Order, paragraph 47 (bold emphasis added, other emphasis in original; footnotes omitted.) In other words, INS and ITA rely upon the reasoning of a particular FCC order relating to ISP traffic to support their position regarding wireless traffic. However, the same FCC order clearly states, in a later paragraph, that the reasoning applicable to ISP traffic does not apply to wireless traffic. INS and ITA ignore this clear, contrary language from the same FCC order. The Board rejects the ITA and INS arguments regarding the application of access charges to intraMTA CMRS traffic and affirms the Proposed Decision and Order on this point.

Issue 2. Should the ITA’s proposed tariff be approved?

A. Summary of arguments

While this case was pending, ITA filed with the Board a proposed tariff that would allow the independent LECs to concur in the tariff and charge access-based rates to the CMRS providers and to Qwest for termination of intraMTA CMRS calls. The Proposed Decision and Order rejected ITA’s proposed tariff because it would

have imposed access charges on local calls. (Proposed Decision and Order at page 21.)

ITA argues the rejection of its proposed tariff was in error for a variety of reasons. First, ITA argues the proposed tariff was not an "access" tariff, so it cannot be rejected for attempting to apply access charges to local service. Instead, ITA calls the tariff a "wireless transport and termination tariff." (ITA Notice of Appeal at pages 12-13.) ITA admits the proposed rate is based on the sum of the traffic-sensitive access rate elements contained in the ITA access tariff, but argues that does not make the resulting rates into access charges. (Id.)

Second, ITA argues its proposed tariff rates are lower than the weighted average forward-looking economic costs (TELRIC rates) of the participating telephone companies. ITA asserts this proves the proposed rates are lawful and reasonable. (Id.)

Third, ITA argues that if Qwest is permitted to have a tariff for providing transit services to wireless carriers, ITA should be permitted to have one, too. (Id.) (The Board notes that the Proposed Decision and Order recognized the ability of INS to file such a tariff see page 30, footnote 5. It is not clear why ITA should be permitted to file such a tariff, however, when its members are terminating the traffic, rather than transiting it. The Board's rules require that local traffic be originated and terminated on a bill and keep basis, as discussed below, making a tariff unnecessary and inappropriate.)

Fourth, ITA argues the Board should follow Missouri's example and approve a model tariff in which the independent telephone companies can concur, since ITA believes the wireless carriers will never request or participate in negotiations. (ITA Notice of Appeal, pages 12-13.)

ITA also argues that review and approval of a tariff is the only way in which the Board can consider market price information for this traffic, as contemplated in the Proposed Decision and Order. Specifically, if the negotiations envisioned in the Proposed Decision and Order fail and the Board is forced to arbitrate interconnection agreements between the independent LECs and the wireless carriers, the Board will not be able to consider market rate information in determining the applicable rates, according to ITA. This is because 47 U.S.C. §252(d)(2)(A) requires that such rates be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." The FCC rules implementing that statute limit the Board to consideration of forward-looking economic costs (i.e., TELRIC methodology), the FCC's default proxies, or bill and keep. The default proxies were struck down in Iowa Utilities Board v. FCC, 219 F.3d 744, 755-56 (8th Cir. 2000), and bill and keep is inappropriate due to traffic imbalances, so in any future arbitration proceeding the Board would be limited to TELRIC pricing, according to ITA. (ITA Notice of Appeal, pages 17-19.)

Verizon responds that the Proposed Decision and Order properly rejected the ITA tariff. Verizon argues the Proposed Decision and Order did not find the proposed tariff was an access tariff, but instead found that the proposed charges are access

charges, which cannot be applied to local traffic. Verizon says that ITA admits its proposed charges are nothing more than the sum of the traffic-sensitive access elements in the ITA access tariff. (Verizon response at pages 2-5.)

Verizon also argues that experience in other states shows that negotiations can be effective in resolving these issues, citing Minnesota and South Dakota. (Id. at pages 7-9.)

Next, Verizon argues ITA mischaracterizes the Proposed Decision and Order regarding the evidence that will be considered in future rate-setting proceedings, should arbitration be necessary. (Id. at page 9.) When discussing the cost evidence to be considered in any future proceeding, the Proposed Decision and Order refers only to the transit rates to be charged by INS, not to the termination fees that may be charged by the independent LECs (if the Board's bill and keep rule is found to be inapplicable).

Finally, Verizon argues the use of bill and keep is consistent with the Board's rule, 199 IAC 38.6, which requires a showing that an imbalance has existed for six months before bill and keep may be rejected. No such evidence was offered, so the Board's rule requires the use of bill and keep, for the exchange of these calls.

Sprint also supports rejection of the ITA tariff, noting that the ITA witness's justification for the proposed rates is that they were based upon access rate elements; Sprint concludes that the resulting rates are, in fact, access charges regardless of how ITA wants to label them. (Sprint response at pages 7-8.) Because local traffic is not subject to access charges, and because intraMTA CMRS traffic is

local, the ITA's attempt to establish an access rate regime for that wireless traffic must be rejected.

Qwest responds to the ITA by arguing that the record evidence supports a finding that the proposed tariff was an access tariff, despite ITA's preferred label, because it attempts to impose access charges. (Qwest response at page 15.) Qwest also argues the evidence includes other examples of why the proposed tariff should be rejected as unreasonable. For example, the proposed tariff gives unreasonably preferential treatment to INS. (Tr. 2407; Ex. 105, § 1.1A.) The proposed ITA tariff gives the independent LECs unilateral discretion regarding points of interconnection and frequency of billing, provisions that Qwest believes to be unreasonable. (Id.)

B. Analysis

The Board will affirm the Proposed Decision And Order and reject the proposed ITA tariff. Despite ITA's claims to the contrary, the rates in the proposed tariff are entirely based on access rate elements and the resulting rates are, in fact, access rates. Otherwise, they have no cost justification at all. Moreover, the Board's rules (199 IAC 38.6) specify the use of bill and keep for the exchange of local traffic, at least until such time as a continuing and significant traffic imbalance has been shown. This record contains, at best, very limited evidence regarding any alleged traffic imbalance between these CMRS carriers and the independent LECs. The evidence falls far short of the requirements of Rule 38.6. Moreover, ITA's numbers appear to be skewed by the independent LECs' practice of requiring that their own

customers dial CMRS customers as toll calls, using 1+ or 0+ for that purpose (and thereby increasing their own originating access charge revenue). If the independent LECs were to treat intraMTA calls from their own customers to CMRS customers as local traffic, then the traffic would be more evenly balanced.

Issue 3. If intraMTA CMRS traffic is local, then how should this traffic be exchanged?

A. Summary of arguments

RIITA, ITA, and INS argue that the Board should approve the proposed ITA tariff rather than require negotiations and should not apply its rule regarding bill and keep to the intra-MTA wireless traffic at issue in this docket. These issues were discussed in the preceding section and will not be repeated here. The remaining issues under this heading concern whether the parties can be required to negotiate interconnection agreements under the Telecommunications Act of 1996.

Central Scott argues the wireless carriers (and, presumably, Qwest) have no right to interconnect with the independent LECs pursuant to a § 252 negotiated interconnection agreement because the independent LECs are all rural LECs under § 251(f)(1) and are therefore exempt from § 251(c) duties and obligations. Instead, according to Central Scott, rural LECs may exercise their discretion in choosing how to meet their interconnection obligations under § 251(a) and may choose to do so directly or indirectly. (Central Scott Notice of Appeal at pages 8, 13-14.)

Verizon responds to Central Scott's argument by first noting that there is no record evidence that Central Scott, or any of the other independent LECs, fits the

definition of a rural carrier. (Verizon response at page 22.) Verizon also points out that Iowa Code § 476.101 provides a state law basis for interconnection requirements without a rural exemption. (Verizon response at page 23.) Finally, Verizon argues that 47 U.S.C. § 251(f) authorizes states to remove a rural exemption, where appropriate. Verizon argues this is an appropriate situation. (Id.)

Qwest also responds to Central Scott's rural exemption argument, see Qwest response at page 51. Qwest argues that regardless of any rural exemption, Central Scott is still obligated to interconnect, directly or indirectly, with CMRS providers, pursuant to 47 U.S.C. § 251(a)(1) and to establish reciprocal compensation arrangements for transport and termination under § 251(b)(5). Qwest also notes the Board has the authority to terminate Central Scott's rural exemption, pursuant to § 251(f)(1).

INS argues that it cannot be made to participate in negotiations and, potentially, arbitration proceedings leading to an interconnection agreement. INS argues that §§ 251(c) and 252, relating to negotiating interconnection agreements and arbitration proceedings, respectively, apply only to incumbent LECs and requesting telecommunications carriers, pursuant to § 251(b). (INS Notice of Appeal at page 16.) INS argues it is not an incumbent LEC, and therefore is not subject to the §§ 251(c) and 252 obligations. (Id. at page 17.) For the same reason, INS argues its agreement with Iowa Wireless is not an interconnection agreement that is subject to opt-in rights under 47 C.F.R. § 51.809.

Verizon responds that INS is subject to state law interconnection requirements pursuant to § 476.101 and 199 IAC 38.3. Furthermore, Verizon argues that the record in this docket reveals that INS is, in fact, a LEC and therefore subject to LEC obligations. (Verizon response at page 17.)

Qwest argues that INS admitted in this proceeding that it is a LEC with a duty to enter into reciprocal compensation agreements under § 251(b)(5), citing INS Ex. 201, page 5. (Qwest response, page 25.) Qwest concludes that if INS wants to be compensated for providing interconnection services in Iowa, it is within the Board's authority to require that INS negotiate and enter into reasonable agreements for that purpose.

B. Analysis

The Board will affirm the Proposed Decision and Order with respect to issue three. The record in this docket is not adequate to permit resolution of all of the issues related to interconnection between and among the various parties to this proceeding, because the parties were not focused on interconnection details. As a result, the record lacks solid information regarding such matters as rural exemption claims, appropriate interconnection rates, and other matters.

Under these circumstances, the best available option is to invoke the procedures of the federal Act and direct the parties to negotiate, then (if necessary) come to the Board for arbitration. The duty to negotiate applies directly to the LECs and wireless carriers, but may not apply to INS; however, the duty to interconnect (and, therefore, the duty to carry traffic) applies to INS just as it does to the other

parties, so if INS wants to be compensated for carrying this traffic it will have to participate in the negotiations and, if necessary, the subsequent arbitration proceedings.

With respect to Central Scott's specific claim of a rural exemption under § 251(f), the Board finds the issue was adequately addressed in the Proposed Decision and Order at page 33:

The [independent LECs] may raise rural exemption claims with respect to this traffic. If so, the Board can establish procedures for making the necessary determinations under 47 U.S.C. § 251(f). Those determinations can be made within the time frame provided for negotiations and arbitration under § 252.

In other words, the Proposed Decision and Order recognized that this record is not adequate to make any rural exemption determinations. The independent LECs have not proven they are entitled to assert the exemption and no evidence has been offered regarding potential adverse economic impacts on users, economic burdens on the LECs, technical feasibility, or the public interest, convenience, and necessity. These are the factors the Board will consider if and when a rural exemption claim is made and disputed, but this is not the time for making those determinations.

Issue 4. Is Qwest entitled to a refund for the 24-month period prior to April 1999?

A. Summary of arguments

The sole issue raised in Qwest's application for rehearing is the proposed resolution of issue four, relating to Qwest's claim for refunds from the independent LECs. Qwest seeks a refund of the access charges it paid to INS and the

independents during the 24-month period prior to April 1999 (when Qwest stopped paying the bills it was receiving from INS and the independents). Qwest claims there is a standard (but unwritten) industry practice that billing errors should be corrected for 24 months prior to the discovery of the error.

The Proposed Decision and Order rejected Qwest's refund request, finding that prior to April, 1999, Qwest had ordered, received, and paid for services from INS and the independents and this payment history should not be changed at this time.

Qwest argues that if the traffic at issue was local traffic after April of 1999, and therefore not subject to access charges, then it was also local traffic prior to that date and not subject to access charges, so the access charges paid by Qwest should be refunded. (Qwest Notice of Appeal at pages 4-6.) Qwest also argues that it did not order these access services because it was not delivering toll traffic, the only type of traffic that can use access services. (Id., pages 6-7.)

INS argues Qwest is not entitled to any refunds, but should instead be required to pay the tariffed CEA and access charges up to the present and into the future, either because (a) this is the proper tariff to apply or (b) this is what the parties agreed upon. (INS response at pages 1-16.) INS next argues that Qwest did not give notice of its position that this is local traffic until April 12, 1999, so Qwest is bound by the tariff prior to that date. (INS response at pages 13-17.)

In the alternative, INS argues there is no standard industry practice for 24-month refunds where the parties have agreed otherwise, as INS argues was done

here, citing Qwest's acceptance of services and payment of bills prior to April 12, 1999. (INS response, pages 17-20.)

INS also argues that any refund would be illegal retroactive ratemaking and a violation of the filed rate doctrine, since it would amount to finding INS's CEA tariff to be retroactively unlawful. (INS response, pages 20-22.)

Finally, INS argues Qwest's calculation of the allegedly incorrect billings is so susceptible to error that it must be rejected. (INS response, pages 22-23.)

ITA argues that Qwest was acting as an interexchange carrier at least until the Proposed Decision and Order was issued, so access charges were appropriate and should be paid. (ITA response at pages 2-3.) Otherwise, ITA argues, Qwest was in violation of 199 IAC 22.14(2)(d)(7), which prohibits delivery of local traffic over access trunks. ITA also argues that the Proposed Decision and Order correctly found that Qwest ordered and received access services and therefore should be required to pay for those services. (Id.)

Finally, ITA argues there is no credible evidence in the record to support refunds. Qwest's confidential exhibit 36, which Qwest relies upon to prove the amount of its claimed refunds, was filed after the close of the hearing, preventing the parties from fully litigating the many apparent errors and inconsistencies alleged to be contained therein. (Id., pages 4-5.)

B. Analysis

The Board will affirm the Proposed Decision and Order with respect to issue four. Prior to April 12, 1999, Qwest ordered, used, and paid for CEA and access

services from INS and the independent LECs for this traffic. The parties' actions demonstrate an agreement that the access charge tariffs were applicable up to a certain time, and that agreement should be enforced up to the moment that one of the parties (Qwest, in this case) unambiguously informed the other that the agreement was no longer in effect.

INS has argued that the failure to apply the tariff after April of 1999 is a violation of the filed rate doctrine or is prohibited retroactive ratemaking, but those principles are not applicable to the unusual circumstances of this case. Normally, if a filed tariff establishes a rate for a service, such as carrying another carrier's traffic, that rate would apply to the traffic up to the date that the tariff was determined to be no longer reasonable and lawful. That rule does not apply in these circumstances, however, because there is no filed tariff that properly applies to this traffic. The only potentially relevant filed tariff is an access tariff, which does not apply to local traffic. In the absence of a relevant filed tariff, the filed rate doctrine does not apply, and Qwest is not obligated to pay CEA and access charges for this local traffic after April of 1999.

For the same reason, the general prohibition against retroactive ratemaking does not apply. The Board is not ordering that the rates of INS or the independent LECs should be changed retroactively; instead, the Board finds that INS and the independent LECs do not have any rates to apply to this traffic after April of 1999.

The situation prior to that date is different, however. Before Qwest gave notice that it no longer considered the CEA and access charge tariffs applicable, the parties

had agreed that those tariffs applied to this traffic, as evidenced by the fact that INS and the independent LECs billed Qwest pursuant to those tariffs and Qwest paid those bills.

When the wrong tariff is applied in a dispute between a regulated utility and a typical end-user, it may be appropriate to revisit and recalculate past bills to correct the error.⁵ However, in a dispute between two telephone companies, each possessed of substantial subject matter expertise and a thorough understanding of the various circumstances applicable to the situation, it is more appropriate to enforce the parties' agreement regarding the applicable tariff (as evidenced by their actions), at least until one company has adequately notified the other that it no longer agrees regarding application of the tariff. In this case, that notice was given so as to be effective in April of 1999.

Moreover, the Board's understanding is that Qwest's alleged industry practice of giving 24-month refunds is limited to billing mistakes, that is, mathematical errors, erroneous entries, and the like. The industry practice is obviously intended as a means of rough justice, to save all parties the expense of reviewing each and every mistake to determine when it first occurred and how far back it should be corrected. The practice is inapplicable in a case like this, where the dispute concerns difficult legal questions about which reasonable people may disagree, rather than simple computational errors.

⁵ Even in these circumstances, this is not always true, see State Central Bank of Keokuk v. Great River Gas Co., 368 N.W.2d 128 (Iowa 1985) (holding that when a customer qualified for two different

OTHER ISSUES RAISED IN THE NOTICES OF APPEAL

Some of the parties raise additional issues in their notices of appeal that they believe were not addressed in the Proposed Decision and Order, as follows.

Central Scott. Central Scott argues that Qwest is violating the EAS agreement between Central Scott and Qwest by delivering non-Qwest-originated traffic over the EAS trunks. Qwest responds that Central Scott is complaining about the mere possibility of a violation, without any proof that such a violation has actually occurred. (Qwest response, page 35.) Qwest also argues that it properly advised Central Scott that wireless-originated traffic was being terminated over the facilities that also carry EAS traffic between the two companies; Qwest offered to provide its 11-50-21 records to Central Scott to identify the traffic, but Central Scott declined the offer. (Qwest response, page 36.) Finally, Qwest notes that Central Scott sends traffic to Qwest over the same facilities for delivery to wireless carriers and their customers; the Central Scott witness explained this practice by asserting that "the trunk groups between us are just trunk groups." (Id., citing Tr. 1422.)

The Board finds that, to the extent wireless-originated or terminated local calls are being sent over the EAS trunks between Qwest and Central Scott, the parties have modified their EAS agreements by their practices to accept this usage. The evidence shows that both companies are using these trunks to carry local traffic between Central Scott's customers and customers of various wireless carriers; as the

service tariffs, and learned that the other tariff would be less expensive overall, the customer was not entitled to refunds for past amounts paid under the higher-cost tariff).

Central Scott witness said, the parties have treated these facilities as "just trunk groups" for the exchange of traffic.

INS. INS argues that the Proposed Decision and Order failed to address issues relating to interMTA calls, including the means by which interMTA calls should be distinguished by intraMTA calls and INS's proposal that Qwest should be required to use dedicated trunks to separate this traffic. (INS Notice of Appeal, pages 18-22.)

Qwest responds that the Proposed Decision and Order clearly left it to the parties to negotiate these issues then bring them to the Board for arbitration if they are unable to resolve them through negotiations. (Qwest response, pages 27-31.)

The Board agrees with Qwest's response; the Proposed Decision and Order directed the parties to negotiate these and other issues. These are good examples of issues that cannot be resolved on the record made by the parties in this proceeding, but that can be resolved, if necessary, in a future arbitration proceeding (if negotiations fail).

INS also argues that the Proposed Decision and Order failed to recognize that the customers of the independent LECs have the right to dial 0+ or 1+ to reach wireless customers with an intraMTA wireless number, thereby using their preferred interexchange carrier (IXC) to complete the call. (INS Notice of Appeal, page 20.)

Qwest argues that is not an issue that had to be decided in this docket because it does not relate to the issues in Qwest's original petition. (Qwest response, pages 31-32.) Qwest also argues the independent LECs are engaged in an "egregious practice" of forcing their customers to make calls to local wireless

numbers using 1+ or 0+ in order to "rack up access charges and long distance fees for calls that the FCC has deemed local, and not subject to access charges or toll charges." (Id., footnote 14.)

INS's argument assumes that customers should pay toll charges in order to make local calls to wireless customers. However, it is obvious that if the customers were given the choice between making a local call to a wireless customer or making a toll call to the same wireless customer, most customers would likely waive their "right" to make a toll call using their preferred interexchange carrier in favor of making the same call as a local one, with no additional charges. The Board will affirm the Proposed Decision and Order on this issue and direct the independent LECs to allow their customers to dial these local calls as local calls.

Finally, INS argues the Board failed to address the issue of whether Qwest should be required to pay late payment penalties on the CEA billings that Qwest has refused to pay since April of 1999. As the Board is affirming the Proposed Decision and Order and finds that Qwest is not obligated to pay centralized equal access charges on local traffic, this issue is moot.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The requests for briefing or oral argument filed on December 11, 2001, by Iowa Network Services, Inc., Central Scott Telephone Company, Iowa

Telecommunications Association, and the Rural Iowa Independent Telephone Association are denied.

2. The Proposed Decision and Order issued in this docket on November 26, 2001, is affirmed. The notices of appeal filed on December 11, 2001, by Iowa Network Services, Inc., Rural Iowa Independent Telephone Association, Qwest Corporation, Iowa Telecommunications Association, and Central Scott Telephone Company, are denied.

3. Any arguments that may have been presented in a notice of appeal or responsive document that were not specifically discussed in the body of this order are rejected as either moot or without merit.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of March, 2002.